

DECLASSIFIED

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

In Re Apple and AT&T iPad Unlimited  
Data Plan Litigation

ALL CONSOLIDATED ACTIONS

Case No. 5:10-cv-02553 RMW

**ORDER GRANTING  
CONDITIONAL CERTIFICATION  
OF AN ATTORNEY NON-SUBSCRIBER  
SETTLEMENT CLASS, APPROVAL OF  
FORMS AND METHODS  
OF NOTICE, AND PRELIMINARY  
APPROVAL OF SETTLEMENT**

Judge: Hon. Ronald M. Whyte

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2 WHEREAS, this Court has reviewed the Stipulation of Settlement (“Agreement”)  
3 entered into by and among defendant AT&T Mobility LLC (“ATTM”) and plaintiff Joe  
4 Hanna, as an individual and as “Class Representative” (collectively the “Parties” in the  
5 above-referenced “Action”), together with all exhibits thereto, the record in this Action,  
6 and the arguments of counsel;

7 WHEREAS, this Court preliminarily finds, for the purposes of settlement only,  
8 that the class alleged in the Action meets all the prerequisites of Federal Rules of Civil  
9 Procedure Rule 23 for class certification, including numerosity, commonality, typicality,  
10 ascertainability, predominance of common issues, superiority, and that the Class  
11 Representative and Class Counsel are adequate representatives of the ATTM Non-  
12 Subscriber Settlement Class;

13 IT IS HEREBY ORDERED AS FOLLOWS:

14 1. Except as otherwise specifically provided, all terms and definitions used  
15 herein have the same meanings as set forth in the Agreement.

16 2. The Court has jurisdiction over the subject matter of the Action, the Class  
17 Representative, the ATTM Non-Subscriber Settlement Class Members, and ATTM, and  
18 venue is proper in this District.

19 3. The proposed settlement set forth in the Agreement is hereby preliminarily  
20 approved as being fair, reasonable, and adequate such that notice thereof should be given  
21 to members of the ATTM Non-Subscriber Settlement Class (as defined in the following  
22 paragraph).

23 4. The Action is provisionally certified as a class action, for the purposes of  
24 settlement only, pursuant to Rule 23(b)(3), which class (the “ATTM Non-Subscriber  
25 Settlement Class”) is defined as follows:

26 All persons in the United States who purchased or ordered an  
27 Apple iPad 3G on or before June 7, 2010 but who did not sign  
28 up for or purchase an ATTM data plan for that iPad 3G at any  
time. Excluded from this Class are Apple; ATTM; any entity in  
which ATTM or Apple has a controlling interest; ATTM and

Apple's directors and officers; Apple's employees; and ATTM  
and Apple's legal representatives, successors, and assigns

5. Certification of the ATTM Non-Subscriber Settlement Class shall be solely  
for settlement purposes and without prejudice to the Parties in the event that the  
Agreement is not finally approved by this Court or otherwise does not take effect.  
Certification of the ATTM Non-Subscriber Settlement Class shall be vacated and shall  
have no effect in the event that the Agreement is not finally approved by this Court or  
otherwise does not take effect.

6. Class Counsel and the Class Representative are hereby found to be and are  
therefore appointed as adequate representatives of the ATTM Non-Subscriber Settlement  
Class: Michael W. Sobol and Roger N. Heller, Lieff Cabraser Heimann & Bernstein,  
LLP, 275 Battery Street, 29th Floor, San Francisco, CA 94111. Joe Hanna is hereby  
appointed as Class Representative.

7. The Court hereby appoints Kurtzman Carson Consultants LLC ("KCC" or  
"Settlement Administrator") to serve as the Settlement Administrator, and directs KCC to  
carry out all duties and responsibilities of the Settlement Administrator specified in the  
Agreement.

8. The Court finds that the forms of notice to the ATTM Non-Subscriber  
Settlement Class regarding the pendency of the Action, this settlement, and Class  
Counsel's fee and expense application, attached to the Agreement as Exhibits A through  
D, and the methods for disseminating notice to members of the ATTM Non-Subscriber  
Settlement Class in accordance with the terms of the Agreement and this Order,  
constitute the best notice practicable under the circumstances and constitute valid, due,  
and sufficient notice to all members of the ATTM Non-Subscriber Settlement Class,  
complying fully with all requirements, including Federal Rule of Civil Procedure 23 and  
due process.

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2           9.   The Notice of Pendency and Proposed Settlements of Class Action (“Class  
3 Notice”); the Dual Summary Notice of Settlement (“Dual Summary Notice”); the Dual  
4 Postcard Notice of Settlement (“Dual Postcard Notice”); and the Published Notice of  
5 Settlement (“Published Notice”), which are attached to the Agreement as Exhibits A-D,  
6 respectively, are hereby approved as to form. The Claim Forms, attached to the  
7 Agreement as Exhibits E-G, are hereby approved as to form.

8           10.   Defendant Apple Inc. (“Apple”) shall, in connection with a separate  
9 settlement in this Action between Apple and plaintiffs, provide the Settlement  
10 Administrator with known, reasonably available e-mail and street addresses, serial  
11 numbers, and IMEI numbers for the Apple Class Members (as that term is defined in the  
12 Apple settlement) based upon Apple’s customer records regarding those iPad 3G  
13 purchases and orders falling within the Apple Settlement Class definition (as that term is  
14 defined in the Apple agreement). Apple shall transmit this information to the Settlement  
15 Administrator by no later than 10 (ten) business days after entry of this Order. Within the  
16 same time frame, Apple shall also transmit to ATTM the IMEI numbers for the potential  
17 Apple Class Members (as that term is defined in the Apple settlement). To the extent  
18 feasible, ATTM shall identify for the Settlement Administrator any persons potentially  
19 within the ATTM Non-Subscriber Settlement Class. Those persons potentially within the  
20 ATTM Non-Subscriber Settlement Class shall be put on a Dual Notice List.

21           11.   The deadline (“Notice Date”) for initially mailing and emailing notice, and  
22 for publishing notice, pursuant to the terms of the Agreement, shall be November 5,  
23 2013. Backup mailed notice, pursuant to the terms of the Agreement and this Order, or  
24 other remailing of notice shall not affect or delay the Notice Date.

25           12.   By no later than the first date on which notice is mailed, e-mailed or  
26 published, the Settlement Administrator shall establish and maintain a toll-free telephone  
27 number (“Toll-Free Number”) which Class Members may call to request copies of the  
28 Class Notice and Claim Form. The Settlement Administrator shall further establish and

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2 maintain a settlement website, at the address [www.3Gdataplansettlement.com](http://www.3Gdataplansettlement.com)  
3 (“Settlement Website”), where ATTM Non-Subscriber Settlement Class Members may  
4 submit online Claim Forms, and which shall include, without limitation, the Class Notice,  
5 a downloadable Claim Form, copies of the Complaint and the Agreement, Frequently  
6 Asked Questions, and the Toll-Free Number.

7       13. By no later than the Notice Date, the Settlement Administrator shall e-mail  
8 the Dual Summary Notice to those Class Members for whom an e-mail address is  
9 included in the Dual Notice List.

10       14. By no later than the Notice Date, the Settlement Administrator shall send,  
11 via first-class mail postage pre-paid, the Dual Postcard Notice to those Class Members  
12 for whom an e-mail address is not included, and a mailing address is included, in the  
13 Dual Notice List. All mailing addresses used for mailing the Dual Postcard Notice shall  
14 be updated by the Settlement Administrator through the United States Postal Service’s  
15 National Change of Address database.

16       15. For those Class Members for whom e-mail Dual Summary Notice is  
17 returned undeliverable, the Settlement Administrator shall mail the Dual Postcard Notice  
18 to such Class Members to the extent a mailing address is included in the Dual Notice  
19 List. For mailed Dual Postcard Notices that are returned with forwarding address  
20 information, the Settlement Administrator shall re-mail the Dual Postcard Notice once to  
21 the new address indicated.

22       16. By no later than the Notice Date, ATTM, together with Apple, shall cause  
23 the Published Notice to be published once in *Macworld* and once on a different date in  
24 *USA Today*. The Published Notice in *Macworld* shall not be less than 1/4 of a page in  
25 size. The Published Notice in *USA Today* shall not be less than 1/8 of a page in size.

26       17. ATTM Non-Subscriber Settlement Class Members who so request shall  
27 receive a reminder e-mail notice from the Settlement Administrator.  
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2           18.   ATTM Non-Subscriber Settlement Class Members shall have the option of  
3 submitting claims using one of the following methods:

4                   a.       ATTM Non-Subscriber Settlement Class Members may submit a  
5 Claim Form electronically through the Settlement Website. The Dual Summary Notices  
6 emailed to ATTM Non-Subscriber Settlement Class Members shall contain a hyperlink to the  
7 appropriate online Claim Form. The Dual Postcard Notices mailed to ATTM Non-  
8 Subscriber Settlement Class Members shall contain the web address for the appropriate  
9 online Claim Form.

10                   b.       ATTM Non-Subscriber Settlement Class Members may submit a  
11 Claim Form by mail at their own expense. The Settlement Website shall include a  
12 downloadable, printable Claim Form, and ATTM Non-Subscriber Settlement Class Members  
13 may obtain a hard copy Claim Form from the Settlement Administrator.

14           19.   ATTM Non-Subscriber Settlement Class Members who wish to claim the  
15 Settlement Data Plan Benefit must submit their Claim Form within ninety (90) days from  
16 the Notice Date. Claim Forms submitted by mail must be postmarked by no later than  
17 ninety (90) days from the Notice Date.

18           20.   Any person or entity falling within the ATTM Non-Subscriber Settlement  
19 Class definition who seeks to be excluded from the ATTM Non-Subscriber Settlement  
20 Class must send a request by first class mail, postmarked on or before December 20,  
21 2013, to the Settlement Administrator at the address indicated in the Class Notice.

22           21.   Any person or entity falling within the ATTM Non-Subscriber Settlement  
23 Class definition who does not submit a valid and timely request for exclusion will be  
24 bound by the Final Judgment dismissing the Action on the merits and with prejudice.

25           22.   Any ATTM Non-Subscriber Settlement Class Member who does not submit  
26 a valid and timely request for exclusion may object to, or comment on, the Agreement  
27 and/or Class Counsels' application for attorneys' fees and expenses. To be considered,  
28 an objection must be in writing, must be mailed to the Clerk of the Court and the

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2 Settlement Administrator, at the addresses indicated in the Class Notice, postmarked no  
3 later than December 20, 2013, and must include: (a) the ATTM Non-Subscriber  
4 Settlement Class Member's name, address, and telephone number, (b) the ATTM Non-  
5 Subscriber Settlement Class Member's signature; (c) a statement that the objecting  
6 person is a member of the ATTM Non-Subscriber Settlement Class and an explanation of  
7 the basis upon which they claim to be a member of the ATTM Non-Subscriber  
8 Settlement Class; (d) all grounds for the objection; and (e) the identify of all counsel, if  
9 any, who represent the ATTM Non-Subscriber Settlement Class Member. Class Counsel  
10 shall file their application for attorneys' fees and costs in advance of the deadline for  
11 mailing objections. Once it is filed, Class Counsels' application for attorneys' fees and  
12 costs shall be posted on the Settlement Website.

13         23. A hearing (the "Final Approval Hearing") shall be held by the Court on  
14 February 7, 2014, at 9:00 a.m., to consider and determine whether the requirements for  
15 certification of the ATTM Non-Subscriber Settlement Class have been met and whether  
16 the proposed settlement of the Action on the terms set forth in the Agreement should be  
17 approved as fair, reasonable, adequate, and in the best interests of the ATTM Non-  
18 Subscriber Settlement Class Members; whether Class Counsels' fee and expense  
19 application should be approved; and whether the Final Judgment approving the  
20 settlement and dismissing the Action on the merits and with prejudice against the Class  
21 Representative and all ATTM Non-Subscriber Settlement Class Members should be  
22 entered.

23         24. The Final Approval Hearing may, from time to time and without further  
24 notice to the ATTM Non-Subscriber Settlement Class, be continued or adjourned by  
25 Order of the Court. If the Final Approval Hearing is so continued or adjourned, the new  
26 date and time shall be posted on the Settlement Website.

27         25. Before or at the Final Approval Hearing, the Court shall be provided with a  
28 declaration from the Settlement Administrator, confirming that the notice program

approved herein has been implemented and setting forth a complete list of all persons and entities who submitted timely and valid requests for exclusion from the ATTM Non-Subscriber Settlement Class.

26. By no later than December 6, 2013, the Parties shall file any motions in support of final approval of the Agreement. By no later than November 22, 2013, Class Counsel shall file their application for attorneys' fees and expenses. By no later than January 24, 2014, the Parties shall file any additional papers in support of final approval of the Agreement; responses to objections; and/or replies in support of Class Counsels' application for attorneys' fees and expenses.

27. Upon entry of this Order, and until further Order of the Court, all proceedings in the Action, except those proceedings in furtherance of obtaining final approval of the settlements, shall be stayed. Until further Order of the Court, Class Members shall be barred from commencing or prosecuting any action or proceeding in any court or tribunal against the Released Parties asserting Released Claims.

28. Counsel for the Parties are hereby authorized to utilize all reasonable procedures in connection with the administration of the Agreement which are not materially inconsistent with either this Order or the terms of the Agreement.

29. The following chart summarizes the various dates and deadlines set forth herein:

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Notice Date	November 5, 2013
Deadline for Class Counsel to file their fee application	November 22, 2013
Deadline for the Parties to file any motions in support of final approval of the settlement	December 6, 2013
Opt-Out Deadline	December 20, 2013
Objection Deadline	December 20, 2013
Deadline for: (a) Parties to file any responses to objections and any additional papers in support of final approval of the settlement; and (b) Class Counsel to file any reply in support of their fee application	January 24, 2014
Claims Submission Deadline	February 3, 2014
Fairness Hearing	February 7, 2014, 9:00 a.m.

IT IS SO ORDERED.

Dated: JED TH, 2013

  
 RONALD M. WHYTE  
 United States District Judge